



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2012-0620; A-1-FRL-9719-1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving in part a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on January 28, 2005. Specifically, EPA is approving a revision to New Hampshire's regulation Env-A 2703.02 for hot mix asphalt plants. This rule establishes and requires limitations on visible emissions from all hot mix asphalt plants. This revision is consistent with the maintenance of all National Ambient Air Quality Standards (NAAQS) in New Hampshire. This action is being taken under the Clean Air Act.

DATES: This direct final rule will be effective [Insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse comments by [Insert date 30 days from date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0620 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.

4. Mail: “Docket Identification Number EPA-R01-OAR-2012-0620”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2012-0620. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of

Ecosystem Protection, 5 Post Office Square – Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912, telephone number (617)918-1684, fax number (617)908-0684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of SIP Revision
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

New Hampshire adopted regulations to limit particulate matter, visible emissions, and fugitive emissions from hot mix asphalt plants in 1995. In 2002, EPA approved Chapter Env-A 1200 “Prevention, Abatement, and Control of Stationary Source Air Pollution,” Part Env-A 1207 “Asphalt Plants” into the New Hampshire State Implementation Plan (67 FR 48033). Env-A 1207 has since been recodified as Env-A 2700.

On July 27, 2004, the New Hampshire Department of Environmental Services (NH DES) proposed revisions to Env-A 2700 “Hot Mix Asphalt Plants” and held a public hearing on

September 15, 2004. Subsequently, NH DES amended Env-A 2700 based on comments received from EPA and others, and adopted the regulation revisions on November 19, 2004, with an effective date of November 24, 2004. On January 28, 2005, NH DES submitted these revisions to EPA for inclusion in the New Hampshire SIP. EPA's review of the SIP submittal indicates that EPA comments on the revisions to Env-A 2700 have been adequately addressed.

At this time, EPA is only approving the New Hampshire SIP revision for Env-A 2703.02(a). EPA will take action on the remainder of Env-A 2700 at a later date. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Summary of SIP Revision

On January 28, 2005, NH DES submitted to EPA amendments to Env-A 2700 Hot Mix Asphalt Plants. The rule presently in the New Hampshire SIP (Env-A 1207.02) applies to pre-June 1974 asphalt plants and provides an alternate opacity limit (60 percent opacity, No. 3 on the Ringelmann Smoke Chart) for a specified time period (3 minutes per startup). This provision did not meet all of EPA's policy requirements for source-specific startup and shutdown emission limits (EPA memorandum, September 20, 1999, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown").

NH DES has recodified and replaced Env-A 1207.02 with Env-A 2703.02 ("Visible Emission Standards for Hot Mix Asphalt Plants"). Env-A 2703.02(a) states that "The owner or

operator of a hot mix asphalt plant shall not cause or allow visible fugitive emissions or visible stack emissions to exceed an average of 20 percent opacity for any continuous 6-minute period” with no exemptions. The revised rule applies to all hot mix asphalt plants regardless of construction date. Thus, the revised rule is more stringent than current SIP requirements, is consistent with EPA’s policy, and meets the section 110(l) anti-backsliding requirements of the Clean Air Act.

At this time EPA is not taking action on provisions of Chapter Env-A 2700 other than Env-A 2703.02(a). EPA intends to take action on the remainder of Env-A 2700 in the near future.

III. Final Action

EPA is approving amendments to the New Hampshire Hot Mix Asphalt Plant Rule at Env-A 2703.02(a) into the New Hampshire SIP. EPA has determined that the revised Env-A 2703.02(a) meets the applicable requirements of section 110 of the Clean Air Act.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this

action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: August 7, 2012

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE – New Hampshire

2. In § 52.1520, the table in paragraph (c) is amended by adding a new entry for state citation “Env-A 2703.02(a)” in alphanumeric order to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA Approved New Hampshire Regulations				
State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
**	*	*	*	**
Env-A 2703.02(a)	Hot Mix Asphalt Plants	11/4/2004	[Insert date of <u>FR</u> publication] [Insert <u>Federal</u> <u>Register</u> page number where the document begins]	Adopted Regulation established Hot Mix Asphalt Plant Requirements
**	*	*	*	**

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

[FR Doc. 2012-20500 Filed 08/21/2012 at 8:45 am; Publication Date: 08/22/2012]